

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,
MARISSA BLAIR, APRIL MUÑIZ,
MARCUS MARTIN, NATALIE ROMERO,
CHELSEA ALVARADO, JOHN DOE, and
THOMAS BAKER,

Plaintiffs,

v.

JASON KESSLER, et al.,

Defendants.

Civil Action No. 3:17-cv-00072-NKM

JURY TRIAL DEMANDED

**PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF THEIR MOTION TO
COMPEL THE DEPOSITION OF DEFENDANT ELLIOTT KLINE A/K/A ELI
MOSLEY**

Plaintiffs respectfully file this supplemental brief in support of their Motion to Compel the Deposition of Defendant Elliott Kline a/k/a Eli Mosley, ECF No. 792 (“Mot.” or “Motion to Compel”). As set forth in their Motion to Compel, Plaintiffs made multiple attempts over the course of months to contact Kline regarding his deposition at all of his known working email addresses, including the email address Kline specifically asked all further emails be sent to. Mot. at 2; Nov. 25, 2019 Contempt Hr’g Tr. at 54:3-4 (“Please send all further e-mails to the deplorabletruth e-mail address”), ECF No. 600. When Kline failed to appear for his duly noticed deposition, Plaintiffs attempted to contact him by calling, texting, and emailing. Mot. at 2.

After not having heard from Kline since early January 2020, on July 17, 2020—the very day his opposition to Plaintiffs’ Motion to Compel was due—Kline emailed Plaintiffs from his deplorabletruth@gmail.com account, which is the same email account he told Plaintiffs months ago to use to communicate with Kline. Ex. A (July 17, 2020 Email from E. Kline to J. Phillips, H. Wheeler, and others). Kline incredibly informed Plaintiffs that *until that very day*, he had “been largely without a phone that can log into [his] email” due to COVID-19 and was “unaware of this deposition being scheduled when it was for July 2nd[.]” *Id.* Kline’s email makes no sense. He does not even attempt to explain how COVID-19 prevented him from accessing email on his phone. Moreover, Kline wholly fails to address why he did not respond to Plaintiffs’ calls and texts to him on the day of his deposition. Kline also stated that he “thought [his deposition] was scheduled for this week or next,” notwithstanding that the deadline for completing party depositions set by the Court’s operative scheduling order was July 17, 2020. *Id.*; Order, ECF No. 597.

Now that Kline has once again belatedly resurfaced, Plaintiffs have re-noticed Kline’s deposition for August 12, 2020. However, Plaintiffs maintain that they are entitled to reasonable

attorneys' fees and costs incurred in arranging Kline's July 2, 2020, deposition and in bringing their Motion to Compel. Kline's excuses are all too familiar. This is the same old song and dance he has previously given to both Plaintiffs and this Court about why he has been unable to comply with his discovery obligations. The Court previously concluded that Kline's excuses are not credible. Jan. 6, 2020 Hr'g Tr. at 39:10-11, ECF No. 632; Order Finding Elliott Kline Remains in Civil Contempt 10-11, ECF No. 610; Order Finding Elliott Kline in Civil Contempt 5-6, ECF No. 599. So too here, the Court should reject Kline's attempt to once again blame technology and claim confusion. It was Kline's responsibility to appear for his duly-noticed deposition and he failed to do so, causing Plaintiffs to further waste time and resources. Reasonable attorneys' fees and costs are warranted.

Dated: July 21, 2020

Respectfully submitted,

/s/ Robert T. Cahill

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CERTIFICATE OF SERVICE

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I further hereby certify that on July 21, 2020, I also served the following non-ECF participants, via electronic mail, as follows:

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